

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ZACHARY VERGARA, individually and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

NINTENDO OF AMERICA INC., a
Washington corporation,

Defendant.

No. _____

Honorable _____

**DECLARATION OF KRISTOPHER KIEL IN SUPPORT OF DEFENDANT
NINTENDO OF AMERICA INC.'S NOTICE OF REMOVAL**

I, Kristopher Kiel, declare as follows:

1. I am Senior Corporate Counsel with Defendant Nintendo of America Inc. ("Nintendo"). I have served in this role for 5 years. In this role, I oversee litigation and business matters. I am over the age of 18 and competent to testify to matters in this Declaration. I make this Declaration based on my personal knowledge.

2. Nintendo is a business located in Redmond, Washington, which is both Nintendo's place of incorporation and its principal place of business.

3. On August 27, 2019, Plaintiff Zachary Vergara served his Complaint on Nintendo of America Inc. via its registered agent.

4. The Nintendo Switch video-game console became available for purchase on March 3, 2017. Since the Switch debuted, Nintendo has sold more than 14.8 million consoles in the Americas. In addition to the console systems, which include two Joy-Con controllers, Nintendo sells individual Joy-Con controllers and dual sets of Joy-Con controllers.

5. The Switch console has a manufacturer suggested retail price of \$299.99. An individual Joy-Con controller has a manufacturer suggested retail price of \$49.99. Dual sets of Joy-Con controllers have a manufacturer suggested retail price of \$79.99.

6. During a user's set-up of a new Switch console, which includes use of the Joy-Con controllers, the user is presented with Nintendo's End User License Agreement ("EULA"). By accepting the terms of that Agreement—which the user must accept to continue using the Switch—the user agrees to mandatory arbitration on an individual basis, unless the user within 30 days opts out of that provision by providing Nintendo written notice. According to Nintendo's records, Mr. Vergara did not so opt out.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 25th day of September, 2019, at Redmond, Washington.

By: 

KRISTOPHER KIEL